

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Norris E. Littlejohn (Respondent) applied for Service Pending Industrial Disability Retirement (IDR) based on otolaryngology (hearing loss) and cardiovascular (heart) conditions on June 10, 2019. By virtue of his employment as a Correctional Officer (CO) for Respondent Department of Corrections Institution for Women, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

Respondent retired for service effective July 18, 2019, and has been receiving a service retirement allowance since then. On August 6, 2019, CalPERS contacted Respondent to inquire about his claimed heart condition. Respondent stated that he no longer wished to pursue his cardiovascular claim, and is only pursuing his claim for hearing loss.

As part of CalPERS' review of Respondent's hearing loss condition, Geoffrey A. Smith, M.D., a board-certified Otolaryngology Surgeon, performed an Independent Medical Examination (IME) on October 21, 2019. Dr. Smith interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Smith opined that Respondent is not substantially incapacitated to perform his usual job duties as a CO based on his hearing loss.

In order to be eligible for disability retirement, competent medical evidence must demonstrate that an individual is substantially incapacitated from performing the usual duties of his or her position. The injury or condition which is the basis of the claimed disability must be permanent or of an extended duration which is expected to last at least 12 consecutive months or will result in death.

After reviewing all medical documentation and IME reports, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of his position due to hearing loss. On December 2, 2019, Respondent was notified of CalPERS' decision to deny his IDR application based on hearing loss, and he was advised of his appeal rights. Prior to receiving notification of the denial, Respondent notified CalPERS that he withdrew his appeal regarding hearing loss but requested to resurrect his claim for cardiovascular condition.

As part of CalPERS' review of Respondent's cardiovascular condition, Robert B. Weber, M.D., a board-certified Cardiologist, performed an IME. Dr. Weber reviewed medical records, took a history of the injury, reviewed his past medical history, family history, performed a review of systems and completed a physical examination. Dr. Weber opined that Respondent is not substantially incapacitated to perform his usual job duties as a CO based on his cardiovascular condition.

After reviewing all medical documentation and IME reports for both otolaryngology and cardiovascular claims, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of his position due to either claimed condition. On April 5, 2021, CalPERS informed Respondent that both claimed conditions had been denied.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on January 5, 2022. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing. The ALJ found that the matter could proceed as a default against Respondent CDCR, pursuant to Government Code section 11520, subdivision (a).

Prior to the hearing, CalPERS explained the administrative hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

At the hearing, Dr. Weber testified in a manner consistent with his examination of Respondent and the IME report. Dr. Weber's medical opinion is that Respondent does not have a cardiologic impairment that arises to the level of substantial incapacity to perform his essential job duties. Dr. Weber found nothing in the records or during his examination that would support Respondent's claim of a previous heart attack.

Respondent testified on his own behalf about his cardiac condition. Respondent testified that he suffered a previous "heart attack," but he presented no evidence to support his claim. Respondent did not call any physicians or other medical professionals to testify, nor did he offer any documentary evidence to support his appeal.

After considering all of the evidence introduced, as well as arguments made by the parties, the ALJ denied Respondent's appeal. The ALJ found Dr. Weber to be a very credible witness, who testified in a sympathetic manner towards Respondent, answering all questions posed to him, describing his findings, and explaining why Respondent's contentions were not supported by Respondent's medical records, objective tests, and physical findings on exam. Respondent did not present any competent medical evidence to establish he is substantially incapacitated. The ALJ found that Respondent holds the burden of proof to show that he is disabled, and that Respondent failed to establish by a preponderance of the evidence that he is substantially incapacitated from performing the usual and customary duties of a CO for CDCR.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

March 16, 2022

NHUNG DAO
Staff Attorney